

New York

Attachment 4.19-A
Part VII

- (vi) Costs of contributions or other payments to political parties, candidates, or organizations shall not be allowed.
- (vii) As determined by the commissioner, only that portion of the dues paid to any professional association which has been demonstrated to be attributable to expenditures other than for lobbying or political contributions shall be allowed.
- (viii) Except as limited below, any reasonable cost incidental to and including, the cost of the sale, purchase alteration, construction, rehabilitation and/or renovation of a physical plant shall be considered allowable up to the amount approved by the commissioner and the director of the Division of the Budget.
 - (a) For any transaction resulting in a change of ownership, the valuation of the asset(s) shall be limited to the lesser of the allowable acquisition cost of the asset(s) to the first owner of record who has received Medicaid payment for the asset(s) in question on or after July 18, 1984, minus any paid depreciation (i.e., seller's net book value) or the acquisition cost of the asset to the new owner.

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- (b) Costs (including legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies) attributable to the negotiation or settlement of the sale or purchase of any capital asset (by acquisition or merger) for which any payment has previously been made under Medicaid, shall not be allowable for reimbursement.
- (c) If a facility's real property assets are sold or leased, or subject to any other transaction which results in a net decrease in the real property cost to the provider, the real property cost portion of a facility's rate shall be prorated accordingly. For the purpose of this section, real property assets refers to buildings, building improvements and fixed equipment. Real property costs are the costs directly related to real property assets.
- (ix) A facility's annual rental payments for real property may be considered an allowable cost subject to the following conditions:
- (a) The lease is reviewed by and acceptable to OMRDD and any other State agency which must by law or regulation review and approve reimbursement rates.
- (b) The lease agreement must be considered an "arms length transaction" not involving either an affiliate, controlling person, immediate family or principal stockholder.
- (c) The "arms length transaction" requirement may be waived by the commissioner upon application for those corporations holding title to the specialty hospital's physical plant, created pursuant to the not-for-profit corporation law with the approval of the commissioner.
- (d) For the purposes of this section, "Affiliate" means:
- (1) With respect to a partnership, each partner thereof.
- (2) With respect to a corporation, each officer, director, principal stockholder and controlling person thereof.

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- (3) With respect to a natural person, each member of said person's immediate family or each partnership and each partner of such person or each corporation in which said person or any affiliate of said person is an officer, director, principal stockholder or controlling person.
- (e) For the purposes of this section, "Controlling person" of any corporation, partnership or other entity means any person who by reason of a direct or indirect ownership interest (whether or record or beneficial) has the ability, acting either alone or in concert with others with ownership interest, to direct or exert a controlling influence on the direction of the management policies of said corporation, partnership or other entity. Neither the commissioner, not any employee of the OMRDD, nor any member of a local legislative body of a county or municipality, nor any county or municipal official except when acting as the administrator of a facility, shall by reason of his or her official position be deemed a controlling person of any corporation, partnership or other entity. Nor shall any person who serves as an executive director, officer, administrator, principal employee or other employee of any corporation, partnership or other entity or as a member of a board of directors or trustees of any corporation be deemed to be a controlling person of such corporation, partnership or other entity solely as a result of such position or his or her official actions in such position.
- (f) For the purposes of this section, "Immediate family" means brother, sister, grandparent, grandchild, first cousin, aunt or uncle, spouse, parent, or child of such person whether such relationship arises by reason of birth, marriage or adoption.
- (g) For the purposes of this section, "Principal stockholder" of a corporation means any person who beneficially owns, holds or has the power to vote, ten percent or more of any class of securities issued by said corporation.
- (h) The rental amount is comparable to similar leases for properties with similar functions in the same geographic area.

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- (i) If the above criteria are not met, reimbursement for lease costs will be determined in accordance with section (d) (8) (x) and (xii).
- (j) Lease options to renew shall not be exercised without review and approval of the parties listed in section (d) (8) ix) (a). Such review and decision shall occur whenever possible more than 30 days before the last date the option may be exercised, the date of which the facility has notified OMRDD in accordance with section (d) (8) (ix) (k).
- (k) Request for approval of lease renewals shall be submitted whenever possible at least 120 days prior to the last date for the exercise of the lease renewal option.
- (x) Depreciation shall be an allowable cost when based upon factors of historical costs and useful life of buildings, fixed equipment and/or capital improvements. For the purposes of this section:
 - (a) Unless an exception is made by the commissioner, the useful life shall be the higher of the reported useful life or those from the "Estimated Useful Lives of Depreciable Hospital Assets" (1983 Edition), published by the American Hospital Association and available by writing to the American Hospital Association, 840 Lake Shore Drive, Chicago, Illinois 60611. On an exception basis, a useful life that is based upon historical experience as shown by documentary evidence and approved by OMRDD may be allowed.
 - (b) The depreciation method used shall be the straight line method.
 - (c) In the event that the historical cost of the facility cannot be adequately determined by the commissioner, an appraisal value shall be the basis for depreciation. The appraisal shall produce a value approximating the cost of reproducing substantially identical assets of like type, quality, and quantity at a price level in a reasonably competitive market as of the date of acquisition. Such appraisal shall be conducted by an appraiser approved by OMRDD and pursuant to a method approved by OMRDD and the cost of that appraisal is also allowable.

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(xi) Costs related to moveable equipment, furniture and fixtures may be considered an allowable cost subject to the following:

(a) Depreciation based upon historical cost of moveable equipment, furniture and fixtures is considered an allowable cost. The useful life shall be the higher of the reported useful life, or those from the "Estimated Useful Lives of Depreciable Hospital Assets" (1983 Edition), published by the American Hospital Association and available by writing to the American Hospital Association, 840 Lake Shore Drive, Chicago, Illinois 60611. On an exception basis, a useful life that is based upon historical experiences as shown by documentary evidence and approved by OMRDD may be allowed.

(b) The facility shall use the straight line, double declining balance or sum of the years digits depreciation method. The depreciation method utilized must remain consistent throughout the useful life of an asset.

(c) Lease payments may be an allowable cost if the payments are made under a lease which is an "arms length transaction" as described in section (d) (8) (ix) (b).

(d) Any personal property and equipment transactions shall be through a multiple bid process and entered into at a fair market value price.

(e) If lease payments are not made pursuant to an "arms length agreement", allowable costs will include allowable depreciation, the associated interest expense, if any, and other related expenses, including but not limited to maintenance costs.

(xii) Interest cost may be considered an allowable cost subject to the following:

(a) Interest for capital indebtedness, where the capital indebtedness does not exceed the current OMRDD approved value of the property, will be considered allowable.

(b) An interest rate shall not be in excess of the amount a prudent borrower would pay at the time the loan was incurred.

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(c) The loan agreement must be entered into between parties not related through control, ownership, affiliation, or personal relationship as defined in section (d)(8)(ix)(d), unless this provision is waived by the commissioner. Such waiver shall be based on, but not limited to, a demonstration of need for the program and cost savings resulting from the transaction.

(d) Interest income generated from the facility's revenues for the operation of the facility shall be used to offset interest expense incurred during the same reporting period.

Notwithstanding the foregoing, a facility is not required to use the following to offset interest expense: income earned on qualified pension funds, income from gifts or grants which is donor-restricted, or income earned on secure investments pursuant to section (d)(10).

(e) Interest on working capital indebtedness in accordance with standards contained herein will be considered allowable. In the event that a loan is not in accordance with the standards listed above, the approval of the commissioner is required.

(xiii) Costs of related organizations, other than costs incurred pursuant to a lease, rent or purchase of real property, may be considered an allowable cost subject to the following:

(a) A "related organization" means any entity of which the provider is in control or which the provider is controlled by (subject to the limitations in section (d)(8)(ix)(e)), either directly or indirectly, or where a common ownership or financial interest exists in an entity which supplies goods and/or services to the facility.

(b) The costs of goods and/or services furnished to a facility, within the course of normal business operations, by a related organization are allowable at the cost to the related organization, or the market price of comparable goods and/or services available in the facility's region, whichever is lower.

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(xiv) Restricted funds are funds expended by the facility which include grants, gifts, and income from endowments, whether cash or otherwise, which must be used only for a specific purpose as designated by the donor or grant instrument. Restricted funds are to be deducted from the designated costs when determining allowable costs. The commissioner may waive the provisions of this section at his discretion only in those instances where the provider makes a reasonable showing that the imposition of the requirements of this section would have a material adverse effect on the facility's capability to operate in an efficient and economical manner.

- (9) All rates, and any adjustments to a facility's rates shall not be considered final, unless approved by the Director of the Division of the Budget.

For any rate period during which the reimbursement attributable to depreciation on a facility's real property, excluding equipment, exceeds the provider's principal repayment obligations on indebtedness attributable to such real property, such provider shall fund depreciation by depositing such difference in an interest-bearing checking account or other secure investment. If the provider operates more than one facility governed by this section (d)(10), the provider may maintain one funded depreciation account for two or more facilities. The provider shall not commingle such funded depreciation account(s) with other monies of the provider. The provider shall not be required to fund depreciation attributable to the provider's equity in such real property. The provider may expend the funds in such account, including accrued interest, to retire all or a portion of the indebtedness attributable to such real property, or for building improvements and/or fixed equipment necessary to the facility.

(e) Rate Appeals

(1) First Level Rate Appeals

- (1) The commissioner shall consider applications for revisions to the rate, if brought within 120 days of the provider's receipt of the initial rate computation sheet. However, if the appeal is to the ACD rate calculated in accordance with section (d)(4)(ii), the appeal must be from the ACD rate for a group of clients residing in a physically distinct wing, unit or part of the facility, receiving similar services, having similar characteristics and for whom the provider can identify discrete costs.

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(ii) For any appeal, the provider must demonstrate that the rate requested in the appeal is necessary to ensure efficient and economic operation of the facility. If an appeal pursuant to this section is to the ACD rate, the provider must also show that the clients to whom the appeal pertains require care for which the necessary cost of providing client care exceeds the ACD rate.

(iii) First Level rate revision appeal applications shall be made in writing to the commissioner.

(a) The application shall set forth the basis for the appeal and the issues of fact. Appropriate documentation shall accompany the application and OMRDD may request such additional documentation as it deems necessary.

(b) Actions on first level rate appeal applications will be processed without unjustifiable delay.

(iv) A rate revised by OMRDD pursuant to an appeal shall not be considered final unless and until [the appeal is granted by OMRDD and] approved by the State Division of the Budget.

Except as provided in item (vi) below, at the conclusion of the first level appeal process, OMRDD shall notify the Specialty Hospital of any proposed revised rate or denial of same. OMRDD shall inform the facility that the facility may either accept the proposed revised rate or request a second level appeal in accordance with Title 14 NYCRR section 602.9 in the event that the proposed revised rate fails to grant some or all of the relief requested.

[There shall be a formal notification of the final decision on the provider's rate appeal. However,] At no point in the first level appeal process shall the provider have a right to any form of interim report or determination made by OMRDD or Division of the Budget.

[(6)] [Such formal notification shall be sent to the provider by certified mail, return receipt requested.]

[(7)] (vi) If OMRDD approves the revision to the rate and State Division of the Budget denies the revision, the provider shall have no further right to administrative review pursuant to this section.

[(8)] (vii) Any rate revised in accordance with section (d) shall be effective according to the dates indicated in the approval of rate appeal notification. Such notification shall be sent to the provider by certified mail, return receipt requested.

[(9)] (viii) Any additional reimbursement received by the facility, pursuant to a rate revised in accordance with section (e), shall be restricted to the specific purpose set forth in the final appeal decision.

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[(10) If OMRDD denies an appeal to the rate in whole or in part, the facility shall have the right to a hearing in accordance with 14 NYCRR Part 602.]

(2) Second level rate appeals

- (i) OMRDD's denial of the first level appeal of any or all of the relief requested in the appeals provided for in this section of the State Plan shall be final, unless the facility requests a second level appeal to the commissioner in writing within 30 days of notification of denial or proposed revised rate.
- (ii) Second level appeals shall be brought and determined in accordance with the applicable provision of Title 14 NYCRR Part 602.
- (iii) A rate revised by OMRDD pursuant to a second level appeal shall not be considered final unless and until approved by the State Division of the Budget.

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[(10)] [If CMPDD denies an appeal to the rate in whole or in part, the facility shall have the right to a hearing in accordance with 14 NYCRR Part 602.]

(f) Audits

- (1) Each provider shall maintain the statistical and financial records which formed the basis of the reports submitted to the commissioner or his agent for six years from the date on which the reports were submitted or due whichever is later.
- (2) All such records shall be subject to audit for a period of six years from the date on which the reports were submitted or due to the commissioner or his agent, whichever is later.
 - (i) Field audits or desk audits shall be conducted by the commissioner or his agent or the Department of Social Services at a time and place and in a manner to be determined by the commissioner or the DSS.
 - (ii) The audits may be performed on any financial or statistical records required to be maintained.
 - (iii) Any finding of an above described audit shall constitute grounds for recoupment at the discretion of the commissioner, provided that such audit finding relates to the allowable costs, and to the extent that, except as authorized in 18 NYCRR Section 517.66, the audit finding has been upheld in a decision after a hearing or a hearing has not been requested on such finding.
 - (iv) The six-year limitation shall not apply in situations in which fraud may be involved or where the provider or an agent thereof prevents or obstructs the commissioner from performing an audit pursuant to this section.
- (3) All administrative review (including hearings) of audits conducted to determine allowable Medicaid expenses and offsetting revenues shall be in accordance with 18 NYCRR Part 517.
- (4) All administrative review of audits which are conducted by CMPDD, and which are not described in section (f)(3) above, shall be in accordance with the following:

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